

FIRST REGULAR SESSION

SENATE BILL NO. 432

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

Read 1st time February 16, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1973S.011

AN ACT

To repeal section 452.375, RSMo, and to enact in lieu thereof one new section relating to custody of in vitro human embryos.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 452.375, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 452.375, to read as follows:

452.375. 1. As used in this chapter, unless the context clearly indicates
2 otherwise:

3 (1) "Custody" means joint legal custody, sole legal custody, joint physical
4 custody or sole physical custody or any combination thereof;

5 (2) **"In vitro human embryo" means any human embryo at any
6 stage of development which is not conceived within a female;**

7 (3) "Joint legal custody" means that the parents share the
8 decision-making rights, responsibilities, and authority relating to the health,
9 education and welfare of the child, and, unless allocated, apportioned, or decreed,
10 the parents shall confer with one another in the exercise of decision-making
11 rights, responsibilities, and authority;

12 [(3)] (4) "Joint physical custody" means an order awarding each of the
13 parents significant, but not necessarily equal, periods of time during which a
14 child resides with or is under the care and supervision of each of the
15 parents. Joint physical custody shall be shared by the parents in such a way as
16 to assure the child of frequent, continuing and meaningful contact with both
17 parents;

18 [(4)] (5) **"Surrogate" means a woman who is not an ovum donor
19 but in whose womb an in vitro human embryo is implanted;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 **(6)** "Third-party custody" means a third party designated as a legal and
21 physical custodian pursuant to subdivision (5) of subsection 5 of this section.

22 2. The court shall determine custody in accordance with the best interests
23 of the child. When the parties have not reached an agreement on all issues
24 related to custody, the court shall consider all relevant factors and enter written
25 findings of fact and conclusions of law, including, but not limited to, the following:

26 (1) The wishes of the child's parents as to custody and the proposed
27 parenting plan submitted by both parties;

28 (2) The needs of the child for a frequent, continuing and meaningful
29 relationship with both parents and the ability and willingness of parents to
30 actively perform their functions as mother and father for the needs of the child;

31 (3) The interaction and interrelationship of the child with parents,
32 siblings, and any other person who may significantly affect the child's best
33 interests;

34 (4) Which parent is more likely to allow the child frequent, continuing and
35 meaningful contact with the other parent;

36 (5) The child's adjustment to the child's home, school, and community;

37 (6) The mental and physical health of all individuals involved, including
38 any history of abuse of any individuals involved. If the court finds that a pattern
39 of domestic violence as defined in section 455.010 has occurred, and, if the court
40 also finds that awarding custody to the abusive parent is in the best interest of
41 the child, then the court shall enter written findings of fact and conclusions of
42 law. Custody and visitation rights shall be ordered in a manner that best
43 protects the child and any other child or children for whom the parent has
44 custodial or visitation rights, and the parent or other family or household member
45 who is the victim of domestic violence from any further harm;

46 (7) The intention of either parent to relocate the principal residence of the
47 child; and

48 (8) The wishes of a child as to the child's custodian. The fact that a
49 parent sends his or her child or children to a home school, as defined in section
50 167.031, shall not be the sole factor that a court considers in determining custody
51 of such child or children.

52 3. (1) In any court proceedings relating to custody of a child, the court
53 shall not award custody or unsupervised visitation of a child to a parent if such
54 parent or any person residing with such parent has been found guilty of, or pled
55 guilty to, any of the following offenses when a child was the victim:

56 (a) A felony violation of section 566.030, 566.032, 566.031, 566.060,
57 566.062, 566.064, 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111,
58 566.151, 566.203, 566.206, 566.209, 566.211, or 566.215;

59 (b) A violation of section 568.020;

60 (c) A violation of subdivision (2) of subsection 1 of section 568.060;

61 (d) A violation of section 568.065;

62 (e) A violation of section 573.200;

63 (f) A violation of section 573.205; or

64 (g) A violation of section 568.175.

65 (2) For all other violations of offenses in chapters 566 and 568 not
66 specifically listed in subdivision (1) of this subsection or for a violation of an
67 offense committed in another state when a child is the victim that would be a
68 violation of chapter 566 or 568 if committed in Missouri, the court may exercise
69 its discretion in awarding custody or visitation of a child to a parent if such
70 parent or any person residing with such parent has been found guilty of, or pled
71 guilty to, any such offense.

72 4. The general assembly finds and declares that it is the public policy of
73 this state that frequent, continuing and meaningful contact with both parents
74 after the parents have separated or dissolved their marriage is in the best
75 interest of the child, except for cases where the court specifically finds that such
76 contact is not in the best interest of the child, and that it is the public policy of
77 this state to encourage parents to participate in decisions affecting the health,
78 education and welfare of their children, and to resolve disputes involving their
79 children amicably through alternative dispute resolution. In order to effectuate
80 these policies, the court shall determine the custody arrangement which will best
81 assure both parents participate in such decisions and have frequent, continuing
82 and meaningful contact with their children so long as it is in the best interests
83 of the child.

84 5. Prior to awarding the appropriate custody arrangement in the best
85 interest of the child, the court shall consider each of the following as follows:

86 (1) Joint physical and joint legal custody to both parents, which shall not
87 be denied solely for the reason that one parent opposes a joint physical and joint
88 legal custody award. The residence of one of the parents shall be designated as
89 the address of the child for mailing and educational purposes;

90 (2) Joint physical custody with one party granted sole legal custody. The
91 residence of one of the parents shall be designated as the address of the child for

92 mailing and educational purposes;

93 (3) Joint legal custody with one party granted sole physical custody;

94 (4) Sole custody to either parent; or

95 (5) Third-party custody or visitation:

96 (a) When the court finds that each parent is unfit, unsuitable, or unable
97 to be a custodian, or the welfare of the child requires, and it is in the best
98 interests of the child, then custody, temporary custody or visitation may be
99 awarded to any other person or persons deemed by the court to be suitable and
100 able to provide an adequate and stable environment for the child. Before the
101 court awards custody, temporary custody or visitation to a third person under this
102 subdivision, the court shall make that person a party to the action;

103 (b) Under the provisions of this subsection, any person may petition the
104 court to intervene as a party in interest at any time as provided by supreme court
105 rule.

106 6. If the parties have not agreed to a custodial arrangement, or the court
107 determines such arrangement is not in the best interest of the child, the court
108 shall include a written finding in the judgment or order based on the public policy
109 in subsection 4 of this section and each of the factors listed in subdivisions (1) to
110 (8) of subsection 2 of this section detailing the specific relevant factors that made
111 a particular arrangement in the best interest of the child. If a proposed custodial
112 arrangement is rejected by the court, the court shall include a written finding in
113 the judgment or order detailing the specific relevant factors resulting in the
114 rejection of such arrangement.

115 7. Upon a finding by the court that either parent has refused to exchange
116 information with the other parent, which shall include but not be limited to
117 information concerning the health, education and welfare of the child, the court
118 shall order the parent to comply immediately and to pay the prevailing party a
119 sum equal to the prevailing party's cost associated with obtaining the requested
120 information, which shall include but not be limited to reasonable attorney's fees
121 and court costs.

122 8. As between the parents of a child, no preference may be given to either
123 parent in the awarding of custody because of that parent's age, sex, or financial
124 status, nor because of the age or sex of the child. The court shall not presume
125 that a parent, solely because of his or her sex, is more qualified than the other
126 parent to act as a joint or sole legal or physical custodian for the child.

127 9. Any judgment providing for custody shall include a specific written

128 parenting plan setting forth the terms of such parenting plan arrangements
129 specified in subsection 8 of section 452.310. Such plan may be a parenting plan
130 submitted by the parties pursuant to section 452.310 or, in the absence thereof,
131 a plan determined by the court, but in all cases, the custody plan approved and
132 ordered by the court shall be in the court's discretion and shall be in the best
133 interest of the child.

134 10. After August 28, 2016, every court order establishing or modifying
135 custody or visitation shall include the following language: "In the event of
136 noncompliance with this order, the aggrieved party may file a verified motion for
137 contempt. If custody, visitation, or third-party custody is denied or interfered
138 with by a parent or third party without good cause, the aggrieved person may file
139 a family access motion with the court stating the specific facts that constitute a
140 violation of the custody provisions of the judgment of dissolution, legal
141 separation, or judgment of paternity. The circuit clerk will provide the aggrieved
142 party with an explanation of the procedures for filing a family access motion and
143 a simple form for use in filing the family access motion. A family access motion
144 does not require the assistance of legal counsel to prepare and file."

145 11. No court shall adopt any local rule, form, or practice requiring a
146 standardized or default parenting plan for interim, temporary, or permanent
147 orders or judgments. Notwithstanding any other provision **of law** to the
148 contrary, a court may enter an interim order in a proceeding under this chapter,
149 provided that the interim order shall not contain any provisions about child
150 custody or a parenting schedule or plan without first providing the parties with
151 notice and a hearing, unless the parties otherwise agree.

152 12. Unless a parent has been denied custody rights pursuant to this
153 section or visitation rights under section 452.400, both parents shall have access
154 to records and information pertaining to a minor child including, but not limited
155 to, medical, dental, and school records. If the parent without custody has been
156 granted restricted or supervised visitation because the court has found that the
157 parent with custody or any child has been the victim of domestic violence, as
158 defined in section 455.010, by the parent without custody, the court may order
159 that the reports and records made available pursuant to this subsection not
160 include the address of the parent with custody or the child. Unless a parent has
161 been denied custody rights pursuant to this section or visitation rights under
162 section 452.400, any judgment of dissolution or other applicable court order shall
163 specifically allow both parents access to such records and reports.

164 13. Except as otherwise precluded by state or federal law, if any
165 individual, professional, public or private institution or organization denies access
166 or fails to provide or disclose any and all records and information, including, but
167 not limited to, past and present dental, medical and school records pertaining to
168 a minor child, to either parent upon the written request of such parent, the court
169 shall, upon its finding that the individual, professional, public or private
170 institution or organization denied such request without good cause, order that
171 party to comply immediately with such request and to pay to the prevailing party
172 all costs incurred, including, but not limited to, attorney's fees and court costs
173 associated with obtaining the requested information.

174 14. An award of joint custody does not preclude an award of child support
175 pursuant to section 452.340 and applicable supreme court rules. The court shall
176 consider the factors contained in section 452.340 and applicable supreme court
177 rules in determining an amount reasonable or necessary for the support of the
178 child.

179 15. If the court finds that domestic violence or abuse as defined in section
180 455.010 has occurred, the court shall make specific findings of fact to show that
181 the custody or visitation arrangement ordered by the court best protects the child
182 and the parent or other family or household member who is the victim of domestic
183 violence, as defined in section 455.010, and any other children for whom such
184 parent has custodial or visitation rights from any further harm.

185 **16. If a dispute is brought before a court of this state involving**
186 **the custody of an in vitro human embryo, the court shall render a**
187 **decision according to the following standards:**

188 **(1) The court shall determine custody in accordance with the**
189 **best interest of the in vitro human embryo. It is presumed that it is in**
190 **the best interest of the in vitro human embryo to place him or her in**
191 **the custody of the ovum donor or spermatozoon donor who intends to**
192 **develop the in vitro human embryo to birth, subject to rebuttal**
193 **evidence;**

194 **(2) The court shall resolve the dispute between the parties in the**
195 **manner that provides the best chance for the in vitro human embryo to**
196 **develop and grow;**

197 **(3) The following persons have standing to petition the court or**
198 **to intervene in a case: the ovum donor, spermatozoon donor, or the**
199 **surrogate, who shall have limited standing for only those embryos that**

200 have been previously placed inside the womb of the surrogate;

201 (4) The court may uphold an agreement between the parties to
202 an action establishing or terminating parental rights as not against
203 public policy; and

204 (5) All agreements brought before the court concerning the
205 disposition of in vitro human embryos shall be subject to the provisions
206 of this section.

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